



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 6129-99
17 November 1999

1STLT [REDACTED] JR USMCR
[REDACTED]

Dear Lieutenant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 November 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps (HQMC) Performance Evaluation Review Board (PERB) in your case, dated 27 September 1999, and the advisory opinion from the HQMC Officer Career Counseling and Evaluation Section, Officer Assignment Branch, Personnel Management Division (MMOA-4), dated 13 October 1999, copies of which are attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish probable material error or injustice. In this connection, they substantially concurred with the report of the PERB. They found that the reviewing officer (RO) comments at issue did not violate the prohibition against "faint praise." The Marine Corps lieutenant colonel's statement of 1 June 1999, at enclosure (2) to your application, did not persuade them that the RO's opinion of your "general value to the service" was invalid. Because the fitness report of record accurately showed the RO's grade as major, they found the error on your Master Brief Sheet showing his grade as lieutenant colonel did not contribute to your failures of selection by the Fiscal Year 1999 and 2000 Captain Selection Boards. Since they found no material error in the information considered by these promotion boards, they had no grounds to remove your failures of selection, grant you consideration by a special selection board, or set aside your discharge from the Regular Marine Corps on 1 November 1999. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosures



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6129-99

IN REPLY REFER TO:
1610
MMER/PERB
SEP 27 1999

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF
FIRST LIEUTENANT [REDACTED] MC

Ref: (a) 1stLt. [REDACTED] DD Form 149 of 2 Jun 99
(b) MCO P1610.7D w/Ch 1-4

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 22 September 1999 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the Reviewing Officer's remarks appended to subject's fitness report for the period 971008 to 971231 (AN) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that Major [REDACTED] remarks are "conclusory and without justification", and that at a minimum, he should have amplified those remarks (subparagraph 4014.2(d)(1)(b) of MCO P1610.7E). To support his appeal, the petitioner furnishes his own detailed statement, and advocacy letters from Captain [REDACTED] (the Reporting Senior) and Lieutenant Colonel [REDACTED] (the Battalion Commander).

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. At the outset, the Board points out that the petitioner has cited the incorrect directive in attempting to establish his arguments. Reference (b) was the governing Marine Corps Order -- not MCO P1610.7E as he has referenced. That fact notwithstanding, the Board finds nothing objectionable in Major [REDACTED] comments. While it would have been preferable for Major [REDACTED] have provided a more in-depth commentary into his reasoning for disagreeing with the Reporting Senior's ranking, the absence of such information is not contrary to either the spirit and intent of reference (b). Additionally, we do not find that Major [REDACTED] comments imply any adversity in the petitioner's performance. Rather, the assessment made is that the petitioner simply had not yet achieved the "outstanding" category. Reference (b) establishes no presumption that a Marine is somehow "outstanding" until proven otherwise. Therefore the

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Reviewing Officer had no obligation to counsel the petitioner as if "outstanding" was a given gradient for performance.

b. While the statements from Captain [REDACTED] and Lieutenant Colonel [REDACTED] are certainly supportive, we point out the following:

(1) Captain [REDACTED] has already penned his assessment of the petitioner's overall performance via the fitness report at issue. Enclosure (1) to reference (a) is merely a reiteration of that evaluation and a disagreement with the Reviewing Officer's action to disagree.

(2) Paragraph 1005 and subparagraph 4001.3 of reference (b) outline the responsibilities inherent in commanders relative to enforcing the tenants of the Performance Evaluation System. Lieutenant Colonel [REDACTED] stated lack of opportunity to view the report appears to have been an administrative oversight within the 2d Radio Battalion. Nevertheless, even if he had reviewed the report, the Board emphasizes that reference (b) offered no provision whatsoever for him to append additional comments (i.e., he was not in the official reporting chain).

4. The Board's opinion, based on deliberation and secret ballot vote, is that the Reviewing Officer's Certification/comments should remain a part of the contested fitness report.

5. The case is forwarded for final action.

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

6129-99

IN REPLY REFER TO:

1600
MMOA-4
13 Oct 99

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: BCNR PETITION FOR FIRST LIEUTENANT [REDACTED]
[REDACTED] USMC

Ref: (a) MMER Request for Advisory Opinion in the case of
First Lieutenant [REDACTED]
300 [REDACTED] Oct 99

1. Recommend disapproval of First Lieutenant [REDACTED] request for removal of his failures of selection and a Special Selection Board (SSB).

2. Per the reference, we reviewed First Lieutenant [REDACTED]'s record and petition. He failed selection on the FY99 and FY00 USMC Captain Selection Boards. Subsequently, he unsuccessfully petitioned the Performance Evaluation Review Board (PERB) for removal of the Annual fitness report of 971008 to 971231. He believes the presence of the report prevented his record from receiving a substantially complete and fair evaluation by the Boards. First Lieutenant [REDACTED] requests removal of his failures of selection and an SSB.

3. In our opinion, First Lieutenant [REDACTED] record as it appeared before the Boards was complete and accurate, and provided a fair assessment of his performance. The unfavorable PERB action does not change in the competitiveness of the record. Therefore, we recommend disapproval of First Lieutenant [REDACTED]'s request for removal of his failures of selection and an SSB.

4. Point of contact is Lieutenant Colonel [REDACTED]
[REDACTED]

[REDACTED]

Lieutenant Colonel, U.S. Marine Corps
Head, Officer Career Counseling and
Evaluation Section
Officer Assignment Branch
Personnel Management Division